



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 3, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0493

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity	Not Sustained (Lawful and Proper)
# 2	16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video	Sustained
# 3	5.001 - Standards and Duties 10. Employees Will Strive to be Professional	Allegation Removed

Imposed Discipline

Oral Reprimand

Named Employee #2

Allegation(s):		Director's Findings
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity h. Employees Stating the Reasons for Stopping BWV	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Will Strive to be Professional	Allegation Removed

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employees responded to an officer involved shooting (OIS) and, while on scene, Named Employee #1 (NE#1) improperly turned off his Body Worn Video (BWV) at the request of Named Employee #2 (NE#2). It was also alleged that NE#1 failed to document the reason for turning off his BWV, NE#2 failed to state the reason for her request, and that both Named Employees were unprofessional.

SUMMARY OF INVESTIGATION:

The Complainant—an SPD Captain—alleged that NE#1 deactivated his BWV at the request of NE#2 while both Named Employees were attending an OIS. The Complainant alleged that, at the time NE#1 deactivated his BWV, neither the scene commander nor Force Investigation Team (FIT) had given the order to turn off BWV. Finally, the Complainant alleged that NE#1 did not document his reasons for deactivating his BWV. OPA commenced this investigation and added allegations against NE#2 for requesting the deactivation and both Named Employees for professionalism.



The relevant facts of this case are not in dispute as they are discernable from NE#1's BWV and a review of SPD records. Both NE#1 (a supervisor) and NE#2 (a homicide detective) responded to an OIS. NE#1 had his BWV activated. While standing at the periphery of the scene, NE#2 and her partner (Detective #1) approached NE#1. Detective #1 asked NE#1 "Do we still have people with BWV on?" NE#1 responded "Yes, I think FIT needs to give them the command."

NE#2 then asked NE#1, "You are not recording, are you?" NE#1 responded "I am, I am still going. Do you need me to turn off for a second?" NE#2 replied "Yeah." NE#1 then deactivated his BWV at about 18:30:48. At about 18:30:49, NE#1 reactivated his BWV but the audio did not record for a 30 second period. NE#1's BWV—without audio—appeared to depict NE#1 and NE#2 conversing for about 9 seconds. About 13 minutes later, FIT gave the order that officers not "working the house or traffic posts" could deactivate BWV. Neither NE#1 nor NE#2 documented the reasons for the requested deactivation.

As part of its investigation, OPA interviewed NE#1 and NE#2.

NE#1 stated that, on the date of this incident, he was a sergeant in the Gun Violence Reduction Unit (GVRU). NE#1 stated that GVRU was conducting an operation on the date of the incident to apprehend a homicide suspect. NE#1 stated that the operation involved sensitive information, including intelligence from a confidential informant (CI) and static video surveillance. NE#1 stated that he was on his way to the location of the operation when he was informed by radio that the homicide suspect had been shot. NE#1 stated that he arrived at the operation command post and—because he was in plainclothes—put on his external vest carrier, which had police markings and his BWV attached. NE#1 stated that he activated his BWV and began assisting with various tasks at the command post. NE#1 stated that, during this time, he spoke with NE#2 at the perimeter of the scene. NE#1 stated that NE#2 "essentially asked to have a private conversation," and so NE#1 deactivated his BWV due to "the circumstances surrounding this investigation, the fact that we're using a confidential informant, that we're using surveillance equipment . . . and it was initially their homicide case." NE#1 acknowledged that he did not document this deactivation in his paperwork "to protect the investigation."

NE#2 stated that, on the date of this incident, she was a detective in the Homicide Unit. NE#2 stated that the GVRU operation was connected to a homicide that she was assigned to investigate. NE#2 also stated that the GVRU operation involved the use of a CI and surveillance. NE#2 stated that she arrived at the scene of the GVRU operation after the OIS. NE#2 stated that her recollection of the events surrounding her conversation with NE#1 was limited. NE#2 stated that, from her perspective, NE#1 appeared to initiate the request to turn off his BWV. NE#2 stated she had "zero" recollection of the substance of the conversation between herself and NE#1, but that she "could assume" that part of the concern was safety of the CI and the sensitivity of investigative techniques.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity

The Complainant alleged that NE#1 improperly deactivated his BWV.

SPD Policy 16.090-POL-1(5)(b) states that when safe and practical, employees will record "arrests and seizures," as well as searches of premises. Officers are permitted to exercise reasonable discretion in not recording under certain situations. SPD Policy 16.090-POL-1(5)(c). Among the permissible exceptions is "when the respect for an individual's



privacy . . . outweighs the need to record an event.” SPD Policy 16.090-POL-1(5)(f). That exception provides examples of where it is applicable, including “when the use of BWV would impede or limit the cooperation of a victim or witness.” *Id.* If an employee stops recording during an event, they must “state on the recording their intention to stop recording and explain the basis for that decision” and also “document the reason(s) in the Report and/or CAD update. SPD Policy 16.090-POL-1(5)(h). Finally, employee on a “perimeter post” at a major incident investigation may deactivate their BWV after the “on-scene supervisor, or FIT commander” authorize that BWV may be stopped. SPD Policy 16.090-POL-1(5)(b).

NE#1 stated that he deactivated his BWV based on legitimate concerns about protecting the integrity of a homicide investigation, to protect the safety of a CI, and keep investigative techniques confidential. OPA has no reason to doubt this explanation. Discussion of information pertaining to a CI on BWV during an active investigation would very likely “impede or limit the cooperation of a . . . witness” by compromising the safety of the CI.

Accordingly, OPA recommends that this allegation be Not Sustained (Lawful and Proper).

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #1 - Allegation #2

16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video

The Complainant alleged that NE#1 failed to document the reasons for deactivating his BWV.

SPD policy requires that employees “document the existence or absence of any BWV . . . in any related paperwork.” SPD Policy 16.090(7). Relatedly, where an employee stops recording during an event, they must “state on the recording their intention to stop recording and explain the basis for that decision” and also “document the reason(s) in the Report and/or CAD update. SPD Policy 16.090-POL-1(5)(h).

NE#1 admitted that he neither stated nor documented the reason for deactivating his BWV. Instead, NE#1 stated that he did not document this information to “protect the investigation.”

OPA is sensitive to the fact that protecting the safety of CIs and maintaining the confidentiality of investigative techniques are of the utmost importance. Moreover, OPA has no evidence to cast doubt that NE#1’s concern about this issue is genuine. However, policy required NE#1 to document his reasons for deactivating his BWV, even if those reasons were stated generally. Of note, it would have been extremely helpful if NE#1 had asked NE#2—however briefly—if the conversation was time-sensitive, and then documented the reason—however generally—that the conversation required him to deactivate his BWV at that time.

Finally, OPA is unable to find that NE#1’s failure to document this information was not willful as he received a training referral regarding this specific policy approximately one year prior to this incident. See 2019OPA-0834. NE#1 was clearly on notice of the need to conform his conduct to this SPD policy.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #1 - Allegation #3

5.001 - Standards and Duties 10. Employees Will Strive to be Professional

The Complainant alleged that NE#1 was unprofessional.

This allegation is duplicative of the conduct analyzed above at Named Employee #1, Allegations #1 and #2. For this reason, this allegation is removed.

Recommended Finding: **Allegation Removed**

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity h. Employees Stating the Reasons for Stopping BWV

It was alleged that NE#2 failed to state a reason for requesting that NE#1 deactivate his BWV.

In her OPA interview, NE#2 accurately noted that SPD Policy 16.090(5)(h) puts the burden of documenting the basis for stopping BWV on the recording officer. NE#2 was not wearing a BWV during the incident; the officer who deactivated his BWV was NE#1. NE#2 was under no obligation to document this information for NE#1—a supervisor who did not even attempt to ascertain NE#2's basis for requesting that he deactivate his BWV before doing so.

Accordingly, OPA recommends that this allegation be Not Sustained (Unfounded).

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #2

5.001 - Standards and Duties 10. Employees Will Strive to be Professional

It was alleged that NE#2 was unprofessional.

This allegation is duplicative of the conduct analyzed above at Named Employee #2, Allegation #1. Accordingly, this allegation is removed.

Recommended Finding: **Allegation Removed**